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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

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Final Candidate Conservation Agreement with Assurances, Final Environmental Assessment, and Finding of No Significant Impact; Lesser Prairie Chicken, Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), make available the final Agricultural Candidate Conservation Agreement with Assurances (CCAA) for the lesser prairie chicken (*Tympanuchus pallidicinctus*) (LEPC) in Oklahoma, as well as the final environmental assessment (EA) and the draft Finding of No Significant Impact (FONSI) under the National Environmental Policy Act of 1969 (NEPA). The Oklahoma

Department of Wildlife Conservation (ODWC) applied for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application included a draft CCAA between the Service and ODWC for the Lesser Prairie Chicken (LEPC) in 14 Oklahoma counties. Our decision is to authorize the issuance of an enhancement of survival permit to the ODWC for implementation of the CCAA (Preferred Alternative described below).

DATES: We will issue a FONSI and make a final permit decision after publication of this notice.

ADDRESSES: For where to view documents, see **Availability of Documents** in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ms. Dixie Porter, Ph.D., Field Supervisor, by U.S. mail at U.S. Fish and Wildlife Service, 9014 East 21st Street, Tulsa, OK 74129, or by telephone at 918–581–7458.

SUPPLEMENTARY INFORMATION: We announce the availability of the final CCAA for the LEPC in Oklahoma, final EA, and FONSI, which we developed in compliance with the agency decision-making requirements of the NEPA. All alternatives have been described in detail, evaluated, and analyzed in our December 2012 final EA and the final CCAA.

Based on our review of the alternatives and their environmental consequences as described in our final EA, we have selected Alternative 2, the proposed agricultural CCAA for the LEPC in Oklahoma. The proposed Federal action is the issuance of a section 10(a)(1)(A) enhancement of survival permit to the ODWC and resulting implementation of the CCAA for the conservation of the LEPC in Oklahoma. With the assistance of the Service, the ODWC would implement conservation measures for the LEPC by removing threats to the survival of these species and protecting their habitat. The CCAA would be in effect for 25 years in Alfalfa, Beaver, Beckham, Cimarron, Custer, Dewey, Ellis, Harper, Major, Roger Mills, Texas, Washita, Woods, and Woodward Counties, Oklahoma. This area constitutes the CCAA's Planning Area, with Covered Areas being eligible non-Federal lands within the Planning Area that provide suitable habitat for LEPC, or have the potential to provide suitable LEPC habitat with the implementation of conservation management practices. The CCAA is in addition to a larger conservation effort for the LEPC across its range within Texas, Oklahoma, Colorado, Kansas, and New Mexico. The CCAA was developed in support of a section 10(a)(1)(A) enhancement of survival permit.

ODWC will enroll participating landowners through issuance of Certificates of Inclusion pursuant to the CCAA. Participating landowners who are fully implementing the CCAA provisions of the enhancement of survival permit will be provided assurances that, should the LEPC be listed, the Service will not require them to provide additional land, water, or financial resources, nor will there be any further restrictions to their land, water, or financial resources than those they committed to under the CCAA provisions. The CCAA provisions are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and

17.32(d). Furthermore, if the LEPC is listed, participating landowners would be provided incidental take authorization under the enhancement of survival permit for the level of incidental take on the enrolled lands consistent with the activities under the CCAA provisions. The proposed term of the CCAA is 25 years from the date the CCAA is signed by ODWC and the Service. The permit will become effective on the date of a final rule that lists the LEPC as threatened or endangered and will continue through the end of the CCAA term.

Background

The LEPC currently occurs in five States: Colorado, Kansas, New Mexico, Oklahoma, and Texas. The species inhabits rangelands dominated primarily by shinnery oak–bluestem and sand sagebrush–bluestem vegetation types. Major factors affecting the status of the LEPC are habitat fragmentation, overutilization by domestic livestock, oil and gas development, wind energy development, loss of native rangelands to cropland conversion, herbicide use, fire suppression, and drought. In 1998, the Service determined that listing of the LEPC was warranted but precluded because of other higher priority species. The December 2008 Candidate Notice of Review elevated the listing priority of the LEPC from an “8” to a “2” because the overall magnitude of threats to the LEPC were increasing and occurring throughout almost all of the currently occupied range.

The Service worked with the ODWC on the development of the CCAA for the LEPC in the State of Oklahoma. The CCAA was initiated in order to facilitate conservation and restoration of the LEPC on private and State trust lands in Oklahoma. Expected

conservation benefits for the LEPC from implementation of the conservation measures in this CCAA will be recognized through improved population performance. Specifically, this will entail expected increases in adult and juvenile survivorship, nest success, and recruitment rates.

Furthermore, LEPC conservation will be enhanced by providing regulatory assurances for participating landowners. With the issuance of the permit, the Service would provide assurances to ODWC and participating landowners that no additional conservation measures would be required beyond those specified in the CCAA should the species become listed in the future as long as ODWC and participating landowners implement and maintain the conservation measures specified in the CCAA in good faith through the duration of the CCAA. There will be a measure of security for participating landowners in the knowledge that they will not incur additional land use restrictions if the species is listed under the Act.

The ODWC has committed to guiding the implementation of the CCAA and requests issuance of the enhancement of survival permit in order to address the take prohibitions of section 9 of the Act should the species become listed in the future. The permit would authorize incidental take associated with implementation of conservation commitments and measures described in the CCAA and existing land uses, primarily agricultural operations, and other covered activities on the enrolled properties.

The Secretary of the Interior has delegated to the Service the authority to approve or deny a section (10)(a)(1)(A) permit in accordance with the Act. To act on ODWC's permit application, we must determine that the CCAA meets the issuance criteria specified in the Act and at 50 CFR 17.22 and 17.32. The issuance of a section (10)(a)(1)(A) permit is a Federal action subject to NEPA compliance, including the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508). The draft CCAA and application for the enhancement of survival permit were not eligible for categorical exclusion under NEPA.

On June 25, 2012 (77 FR 37917), we issued a draft EA and requested public comment on our evaluation of the potential impacts associated with issuance of a permit for implementation of the CCAA and to evaluate alternatives, along with the draft CCAA. We included public comments and responses associated with the draft EA and draft CCAA in an appendix to the final EA.

Purpose and Need

The purpose of the CCAA is to conserve the ecosystems depended upon by the LEPC in such a way as to potentially preclude the need to list this species under the Act. This purpose, under the CCAA, would be accomplished through the voluntary involvement of participating landowners who are willing to protect, maintain, enhance, and develop the habitats necessary for the survival and conservation of LEPC within the planning area.

The purpose of the permit is to provide assurances to ODWC and participating landowners that no additional conservation measures would be required beyond those specified in the

CCAA should the species become listed in the future, as long as ODWC implements and maintains the conservation measures specified in the CCAA in good faith through the duration of the CCAA and associated permit. Should listing of the LEPC occur, the permit would authorize incidental take associated with implementation of conservation commitments and measures described in the CCAA, as well as existing land uses, primarily agricultural operations, and other covered activities on the enrolled properties.

The CCAA and permit are needed to protect and conserve the LEPC through reducing threats that this species faces while providing a mechanism to authorize incidental take of the LEPC, should it be listed pursuant to the Act, for the participating landowners who voluntarily enroll their property and continue conservation activities under the permit.

The Service identified key issues and relevant factors through public scoping, working with other agencies and groups, and reviewing comments from the public. We received 13 comments from eight responders during the public comment period. Three of the comments had reference to the draft EA and 10 referenced the CCAA. The Service's responses to comments are summarized in Appendix A of the final EA. We believe comments are addressed and reasonably accommodated in the final documents. No new significant issues arose following publication of the draft documents.

Alternatives

Alternative 1 (No Action): In the No Action Alternative, the Service would not approve the draft CCAA nor issue the associated section 10(a)(1)(A) enhancement of survival permit. Therefore, a programmatic effort to reduce threats through enrollment of private landowners by ODWC that provides regulatory assurances through a section 10(a)(1)(A) permit of the Act and its implementing regulations, policy, and guidance for CCAAs would not be available. Individual actions and smaller efforts could be undertaken, but the major incentive for landowners to conserve a candidate species such as LEPC would not be in place. The No Action alternative provides the baseline for comparing the environmental effects of the preferred alternative.

Alternative 2 (Preferred Alternative): Our selected alternative is the proposed CCAA, the preferred alternative, as described in the final EA, which provides for the issuance of a permit pursuant to section 10(a)(1)(A) of the Act to the ODWC for incidental take that is anticipated to occur as a result of implementing the CCAA as proposed. The preferred alternative will provide participating landowners, who voluntarily agree to implement conservation measures to restore and/or maintain suitable habitat for LEPCs on their property and manage their lands to remove threats to the LEPC, regulatory assurances that their conservation efforts will not result in future regulatory obligations in excess of those they agree to at the time they enter into the CCAA. Participating landowners must agree to implement a Wildlife Management Plan (WMP) developed by ODWC, which will include a list of conservation actions for the LEPC and its habitat. ODWC will enroll participating landowners under the CCAA through issuance of Certificates of Inclusion (CI), which will serve to link the individual site-specific WMPs to the programmatic CCAA and convey the

regulatory assurances provided in the permit to the participating landowner. The CCAA conservation actions to be implemented or maintained are intended to conserve, restore, and/or enhance LEPC habitat so that progress toward sustainable population levels can occur. Implementation of these actions is also intended to reduce any unfavorable impacts to LEPC arising from the management and utilization of the enrolled lands. CI applications and the supporting ODWC-approved WMPs will address the improvements to be made, sources of funding, responsibilities for completion of improvements, a time frame, and a monitoring plan to assure the success of improvements. This alternative includes implementation of conservation measures to avoid and minimize the potential incidental take of lesser prairie chicken to the maximum extent practicable.

Decision

We intend to issue an enhancement of survival permit allowing ODWC to implement the preferred alternative (Alternative 2), as it is described in the final CCAA and EA. Our decision is based on a thorough review of the alternatives and their environmental consequences. Implementation of this decision entails the issuance of the permit, including all terms and conditions governing the permit. Implementation of this decision requires that ODWC adhere to the conservation measures specified in the CCAA in good faith through the duration of the CCAA and permit.

Rationale for Decision

We have selected the preferred alternative (Alternative 2) for implementation based on multiple environmental and social factors, including potential impacts to the LEPC, the

benefits to the LEPC that are expected to be achieved through implementation of conservation actions and measures contained in the CCAA, and social and economic considerations. We did not choose the No Action Alternative, because, under it, a programmatic effort to reduce threats to the LEPC through enrollment of private landowners by ODWC that provides assurances through section 10(a)(1)(A) of the Act and its implementing regulations, policy, and guidance for CCAAs would not be available. Individual actions and smaller efforts could be undertaken, but the major incentive for landowners to conserve a candidate species such as the LEPC would not be in place, and these smaller efforts would be incapable of providing comprehensive or comparable net benefits as compared to those under the preferred alternative.

In order for us to issue a permit, we must ascertain that the CCAA meets the issuance criteria set forth in 16 U.S.C.1539(a)(2)(A) and (B). In addition, we must determine that the applicant has met all issuance criteria for the permit contained in 50 CFR 17.22(d)(1) and 17.32(d)(1). We have made our determination based on the criteria summarized below:

1. The taking will be incidental. We find that the take of LEPC would be incidental to otherwise lawful activities. ODWC will implement the CCAA, and participating landowner activities will include implementation of conservation commitments and measures described in the CCAA and land uses, primarily agricultural activities, on the enrolled properties. Incidental take authorized under the permit would be in the forms of harassment, harm, and mortality associated with the conservation (e.g., prescribed burning,

prescribed grazing, upland wildlife habitat management, and conservation cover) and monitoring activities necessary to implement the CCAA. Incidental take also is anticipated to occur on enrolled lands as a result of ongoing otherwise-lawful agricultural operations (e.g., crop cultivation and harvesting, livestock grazing, and farm equipment operation), recreational activities (e.g., hunting of other species, dog training, hiking, camping, vehicle use, viewing of LEPCs or other wildlife, and other similar activities), and limited construction (e.g., construction of a storage building/barn; installation of overhead power lines to a house; or expansion, renovation, or rebuilding of a house).

2. The CCAA complies with the requirements of the CCAA policy. The ODWC has developed the CCAA and permit application pursuant to the requirements in the implementing regulations and the issuance criteria for a permit. Conservation benefits for the LEPC from implementation of the CCAA are expected in the form of avoidance of negative impacts; reduction of threats; and conservation, enhancement, and/or restoration of habitat intended to contribute to establishing or augmenting and maintaining viable populations of LEPCs in Alfalfa, Beaver, Beckham, Cimarron, Custer, Dewey, Ellis, Harper, Major, Roger Mills, Texas, Washita, Woods, and Woodward Counties. In addition, conservation of LEPCs would be enhanced by improving and encouraging cooperative management efforts between the ODWC, Service, and participating landowners who own, control, or influence LEPC habitat in Oklahoma. Also, this CCAA may be used as a model for CCAAs in other parts of the LEPC's range to encourage cooperative management and conservation.

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of the survival and recovery in the wild of any species. The Act's legislative history establishes the intent of Congress that this issuance criteria be identical to a regulatory finding of no "jeopardy" under section 7(a)(2) of the Act. As a result, issuance of this section 10(a)(1)(A) permit was reviewed by the Service according to provisions of section 7 of the Act. In the Intra-Service Section 7 Conference Opinion, incorporated herein by reference, the Service concludes that issuance of a permit will not jeopardize the continued existence of the LEPC or any other species. The taking associated with the implementation of the CCAA will be incidental to efforts associated with changes in land use practices and conservation actions for LEPCs in their historic range, and gathering important biological information necessary to continue conservation efforts for the species.

4. Implementation of the terms of the CCAA is consistent with applicable Federal, State, and Tribal laws and regulations. The Service is unaware of any law or regulation that would prevent the implementation of the CCAA and the accompanying permit. The permit will include conditions that revoke the take provisions of the permit if any applicable State, Federal, or tribal law or regulation is broken.

5. Implementation of the terms of the CCAA will not be in conflict with any ongoing conservation programs for species covered by the permit. The CCAA in Oklahoma for the LEPC furthers ongoing conservation activities for the species' conservation, and is essential in developing additional conservation agreements within the historic range of the

LEPC. The Service, Bureau of Land Management, and non-Federal landowners developed a CCA and CCAA to implement similar conservation measures on Federal and non-Federal lands within seven counties in New Mexico. The Service, Texas Parks and Wildlife Department, and non-Federal landowners also have developed a CCAA to implement conservation measures on non-Federal Lands within 50 counties in Texas. This combined Oklahoma–Texas–New Mexico effort should provide conservation incentives and result in greater success in reducing threats and stabilizing the status of LEPC.

6. The Applicant has shown capability for and commitment to implementing all of the terms of the CCAA. The ODWC has shown the ability to administer the CCAA and work effectively with participating landowners to implement conservation commitments in the CCAA. The funding for implementation will come from several sources and will be in place prior to implementation. The ODWC will also have assistance from the Service, Natural Resource Conservation Service, LEPC experts, and stakeholders in determining the conservation priorities. Based on conservation measures described in the CCAA, the Service does not expect any circumstances to occur that would preclude the Applicant’s funding and implementation of the CCAA.

Section 9 of the Act and its implementing regulations prohibit the “taking” of threatened or endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not for the purpose of, otherwise lawful activities.

Availability of Documents

Electronic copies of the final CCAA and final EA will be available on the Service's LEPC website, <http://www.fws.gov/southwest/es/LPC.html>. Alternatively, you may obtain CD-ROMs with electronic copies of these documents by writing to Ms. Dixie Porter, Field Supervisor, U.S. Fish and Wildlife Service, 9014 East 21st Street, Tulsa, OK 74129; calling 918-581-7458; or faxing 918-581-7467. Please refer to TE72923A-0 when requesting documents. The final CCAA and final EA also are available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Tulsa address listed above.

Persons wishing to review the application or FONSI may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1506.6).

Date: January 25, 2013

Benjamin Tuggle

**Regional Director, Southwest Region,
Fish and Wildlife Service.**

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